

On July 25, 2007, Plaintiff filed her Complaint alleging counts of negligence, strict liability and breach of warranty against Berwind Corporation (Berwind), Bepex International, Inc. (Bepex International) and Hosokawa Micron International, Inc. (Hosokawa). Berwind was served at its business location 1500 Market Street, 3000 Centre Square West, Philadelphia. (Affidavit of Service). Bepex International was served via certified mail in Minneapolis, Minnesota, while Hosokawa was served in Summit, New Jersey. (Affidavits of Service). Berwind, Micron and Bepex are successor corporations to Reitz, which is no longer in business, and all defendants are represented by the same counsel. (Preliminary Objections, ¶ 5, Entry of Appearance of 10/12/07).

In December 1975, Reitz was liquidated and merged into Berwind Process Company (BPEC), a wholly owned subsidiary of Berwind. (Preliminary Objections, ¶ 6). BPEC later changed its name to Bepex Corporation (hereinafter Bepex I). (Id., ¶ 7). In October 1982, Bepex I was liquidated and merged back into Berwind, becoming a division of Berwind. (Id., ¶8). In November 1989, a second corporation with the name Bepex Corporation (Bepex II) was incorporated as a wholly owned subsidiary of Berwind Industries. (Id., ¶10). Between 1991 and 1993, through a series of transactions, Micron purchased Bepex II from Berwind and then changed Bepex II's name to Hosokawa Bepex Corporation. (Id., ¶11). In 1997, the involved companies entered into a settlement agreement and release wherein Berwind and its affiliated companies were released from any and all future liabilities and claims relating to Bepex's legal obligations prior to sale. This included potential liability for personal injury claims related to Rietz products. (Id., ¶12). In 2004, Micron sold the Hosokawa Bepex division to Bepex International (defendant in this case). Pursuant to the sale, Bepex International assumed all liabilities related to Hosokawa Bepex, including liability for Rietz. (Id., ¶13). Therefore, Bepex International admits that it is the proper and legal successor corporation to Rietz and that

it is legally responsible for any liabilities incurred based upon personal injury claims resulting from Reitz. (Id., ¶14).

On October 12, 2007 Defendants filed their Preliminary Objections to Plaintiff's Complaint based on improper venue. Plaintiff responded on October 26, 2007. By Order dated November 21, 2007, this Court granted Defendants' Preliminary Objections and transferred the case to Lancaster County.

On December 5, 2007, Plaintiff filed her Notice of Appeal to the Order of November 21, 2007 and issued her Statement of Matters accordingly.

The sole issue to be decided on appeal is whether this Court committed an error of law or abused its discretion in granting Defendant's Preliminary Objections based on improper venue.

LEGAL ANALYSIS

In their Preliminary Objections, Defendants acknowledge that venue in Philadelphia County is proper pursuant to 1006(c)(1) because Berwind has a registered office in Philadelphia County. (Id., ¶17). Defendants also generally allude to the fact that Plaintiff does not have a legally cognizable claim against Berwind and that, "should Berwind be dismissed as a Defendant, venue in Philadelphia County would be improper as to the remaining two Defendants, Micron and Bepex International." (Id., ¶22). However, Berwind never moved to have Plaintiff's claims against them dismissed and as a result they remain a Defendant in the case. Without having Berwind removed as a defendant from the case, venue in Philadelphia County remains proper under Pa.R.C.P 1006.

CONCLUSION

For the foregoing reasons, this Court respectfully requests that the November 21, 2007 Order granting Defendants' Preliminary Objections and transferring the case to the

Lancaster County Court of Common Pleas be vacated and remanded back to the trial Court of Philadelphia County for further action.

BY THE COURT:

DATE

ALLAN L. TERESHKO, J.

cc:
Peter M. Patton, Esq. for Appellant
Allen R. Bunker, Esq., for Appellees